

**KENTUCKY PERSONNEL BOARD**  
**MINUTES OF MAY 14, 2012**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Doug Sapp on May 14, 2012, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Wayne "Doug" Sapp, Chairman  
Larry B. Gillis, Vice Chairman  
David B. Stevens, Member  
David F. Hutcheson, Jr., Member  
Susan Gardner, Member  
Tommy W. Chandler, Member  
Donald W. "Don" Blevins, Member  
Mark A. Sipek, Executive Director and Secretary  
Boyce A. Crocker, General Counsel  
Linda R. Morris, Administrative Section Supervisor  
Cynthia Perkins, Administrative Specialist

**Swearing in Board members – Doug Sapp and Don Blevins (Re-Appointed) and Tommy Chandler (Confirmed)**

The first order of business was to swear in two re-appointed Board Members, Wayne "Doug" Sapp and Donald W. "Don" Blevins and one confirmed Board Member, Judge Tommy Chandler, by Boyce A. Crocker, General Counsel.

2. **READING OF THE MINUTES OF REGULAR MEETING HELD APRIL 13, 2012**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Sapp asked for additions or corrections. Mr. Hutcheson moved to approve the minutes, as submitted. Judge Chandler seconded, and the motion carried 7-0. The Board members signed the minutes.

### 3. EXECUTIVE DIRECTOR'S REPORT

Mr. Sipek announced that Ms. Gardner is retiring from her position with the Department of Financial Institutions effective July 1, 2012. As a result, she will also be relinquishing her position with the Board. Chairman Sapp asked how the vacancy will be filled, since it is an employee Board member. Mr. Sipek stated that by statute, the Board will make the selection. The Personnel Cabinet will notify all state employees of the vacancy. The Board will review the applicants and make the selection.

Mr. Sipek advised that \$30,000 has been restored to the Board's budget for the fiscal year. The Board will be able to continue to hear the evidentiary hearings that are currently scheduled.

Mr. Sipek stated he spoke at the Kentucky Employees Mediation Program (KEMP) quarterly meeting. The mediation program is good for the Board, as it has Agencies thinking about settlement.

A group of international interns stopped by and Mr. Sipek gave them some information concerning the Board's history, procedures and the rights of state employees.

A copy of the Kentucky Supreme Court Order was provided to the Board members concerning *Wanda Faye Wade vs. Finance Cabinet*. Mr. Sipek stated that oral argument is scheduled for June 14, 2012. The issues are whether or not there was a waiver of the pre-termination hearing and whether or not an agency can unilaterally reinstate an employee while an appeal is pending.

The Kentucky Association of Administrative Adjudicators training is scheduled for May 18, 2012. Mr. Sipek, Mr. Crocker and some of the hearing officers will be attending this training.

At the conclusion of Mr. Sipek's report, Chairman Sapp called for the Personnel Cabinet's report.

#### 4. PERSONNEL CABINET'S REPORT

The Hon. Dinah Bevington came forward to present the Personnel Cabinet's report.

As a follow-up to Ms. Bevington's report at the April 2012 Board meeting, she advised that the annual days given to employees as a reward during annual evaluations have now been credited to their account. At Dr. Stevens' request, a report will be provided at the next Board meeting of how many employees qualified for the extra annual days. Ms. Bevington advised that she would have the Director of the Division of Employee Management available to the Board at the next meeting to discuss personnel matters and to answer any questions.

The budget bill proposed the June 30<sup>th</sup> payday be deferred until Monday, July 2, 2012. There will also be a postponement of the June 30<sup>th</sup> payday for the following fiscal year. Banks have been notified about the deferral and will assist in payroll deposits. However, employees receiving paper checks might consider changing to direct deposit. Also, employees with automatic payments should notify the appropriate business with the deferral date, as banks have no control over that. This deferral may occur over the next three fiscal years. Employees can go to the Personnel Cabinet's website for additional information.

Upon conclusion of the Personnel Cabinet's report, Chairman Sapp called the parties forward for oral argument.

#### 5. ORAL ARGUMENTS

##### A. Benjamin Bourne v. Education and Workforce Development Cabinet

Present for oral argument were counsel for the Appellant, the Hon. Don Duff; and counsel for the Appellee, the Hon. James Maxson. After presenting oral arguments, the parties answered questions from the Board.

##### B. Michael Egan v. Cabinet for Health and Family Services

Present for oral argument were the Appellant, Michael Egan, and the Appellee, the Hon. Mary Tansey. After presenting oral arguments, the parties answered questions from the Board.

C. Heather Guisto v. Justice and Public Protection Cabinet (Probation and Parole)

Present for oral argument were counsel for the Appellant, the Hon. John Frith Stewart; Appellant, Heather Guisto; and counsel for the Appellee, the Hon. Wesley Duke. After presenting oral arguments, the parties answered questions from the Board.

D. Mandy Kitts v. Justice and Public Safety Cabinet (Corrections)

Present for oral argument were counsel for Appellant, the Hon. Oliver Barber; Appellant, Mandy Kitts; and counsel for Appellee, the Hon. Wesley Duke. After presenting oral arguments, the parties answered questions from the Board.

E. Laura Moreno v. Cabinet for Health and Family Services

Present for oral argument were counsel for the Appellant, the Hon. Paul Fauri; and counsel for the Appellee, the Hon. Timothy Salansky. After presenting oral arguments, the parties answered questions from the Board.

F. Robert Reynolds v. Transportation Cabinet and Ernie W. Burton

Present for oral argument were counsel for the Appellant, the Hon. James McKenzie; counsel for the Appellee, the Hon. William Fogle; and Intervenor Ernie Burton. After presenting oral arguments, the parties answered questions from the Board.

6. **INVESTIGATIONS**

A. **Dept. of Juvenile Justice, Lincoln Village Youth Detention Center  
Request by Thomas Brandenburg, Former Facilities Superintendent**

Mr. Brandenburg was present and stated that he wanted to read a statement he had prepared.

Mr. Brandenburg said that he began employment at Lincoln Village as the Facilities Superintendent in February 2009. Superintendent Kristy Stutler was his supervisor. In June 2010, after Ms. Stutler left, Ms. Michelle Grady took over as Acting Superintendent. Ms. Grady created a hostile environment and abused authority toward Mr. Brandenburg. In a memorandum dated July 21, 2010, Ms. Grady made accusations and charges that he alleged were not true.

Mr. Brandenburg stated that the harassment and violation of merit rights caused by Ms. Grady forced him to resign in December 2010. After an exit interview, documents were placed in his file, which Mr. Brandenburg had no knowledge of until he filed an open records request. Mr. Brandenburg stated that he had applied for other jobs, and when he was never hired he wanted to find out what was in his file.

Mr. Brandenburg wants the Personnel Board to investigate the mistreatment of him and the hostile work environment created by Ms. Grady

Dr. Stevens asked what options were available as it pertains to the Board's authority. Mr. Sipek stated if the Board finds the documents are inappropriate, the Board could request that the documents be removed from Mr. Brandenburg's personnel file.

Mr. Stafford Eastering, an attorney with the Justice and Public Safety Cabinet, suggested that this matter be postponed to give the agency an opportunity to review Mr. Brandenburg's personnel file.

Mr. Hutcheson moved to table this matter to the next Board meeting and that both personnel files (one at the Personnel Cabinet and one at the agency), be reviewed. Ms. Gardner seconded and the motion carried 7-0.

**B. Referral of Personnel Matters in the Auditor's Report on the Kentucky Department of Agriculture**

Mr. Sipek advised that the Auditor's Office issued a report of their investigation of the Department of Agriculture, and the Board members have received a copy.

Chairman Sapp asked the Board members if they had an opportunity to look at the report. Mr. Blevins stated that he has not thoroughly reviewed the report. He requested that staff should review the report and advise what portion the Board has jurisdiction over.

Mr. Gillis stated that he reviewed the Auditor's report, because he had initiated the investigation of two of the positions mentioned in the report. Mr. Gillis stated that the report fails to specify names of employees and whether those employees are still employed with the Department of Agriculture.

Mr. Blevins made a motion to direct the staff to thoroughly review the auditor's report for discussion of what the Board has jurisdiction over and to get the names of employees and whether they were still employed with the Department of Agriculture for review before the next Board meeting. Dr. Stevens seconded and the motion carried 7-0.

## 7. CLOSED SESSION

Judge Chandler moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Mr. Hutcheson seconded. Chairman Sapp stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 7-0. (12:30 p.m.)

Dr. Stevens moved to return to open session. Mr. Gillis seconded and the motion carried 7-0. (1:25 p.m.)

## 8. CASES TO BE DECIDED

**The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.**

### A. Benjamin Bourne v. Education and Workforce Development Cabinet

Mr. Hutcheson moved to note Appellant's exceptions, Appellee's response and oral argument, and to accept the recommended order dismissing the appeal, with clerical corrections. Mr. Blevins seconded and the motion carried 6-1, with Dr. Stevens opposing.

B. Michael Egan v. Cabinet for Health and Family Services

Mr. Blevins moved to note Appellant's exceptions, Appellee's exceptions and oral argument, and to accept the recommended order dismissing the appeal. Mr. Gillis seconded and the motion carried 7-0.

C. Heather Guisto v. Justice and Public Protection Cabinet  
(Probation and Parole)

Dr. Stevens moved to note Appellee's exceptions, Appellant's exceptions and oral argument, and to accept the recommended order sustaining to the extent the appeal. Mr. Hutcheson seconded and the motion carried 6-1, with Mr. Blevins opposing.

D. Mandy Kitts v. Justice and Public Safety Cabinet (Corrections) (2 appeals)

Ms. Gardner moved to note Appellee's exceptions, Appellant's request to reschedule oral argument and oral argument, and to accept the recommended order sustaining the appeals. Judge Chandler seconded and the motion carried 6-1, with Mr. Blevins opposing.

E. Laura Moreno v. Cabinet for Health and Family Services

Mr. Hutcheson moved to note Appellee's exceptions, Appellant's response and oral argument, and to defer this matter to the next Board meeting. Dr. Stevens seconded and the motion carried 7-0.

F. Robert Reynolds v. Transportation Cabinet and Ernie W. Burton

Mr. Blevins moved to note Appellant's exceptions, Appellee's response and oral argument, and to defer this matter to the next Board meeting. Judge Chandler seconded and the motion carried 6-1, with Mr. Hutcheson opposing.

G. Kenneth Jones v. Justice and Public Safety Cabinet (Corrections)  
**-- Deferred from April**

Mr. Hutcheson moved to note Appellee's exceptions, Appellant's response and oral argument, and to accept the Final Order Altering the recommended order and dismissing the appeal, as attached to the minutes. Mr. Gillis seconded and the motion carried 7-0.

H.     Rhonda Watts v. Cabinet for Health and Family Services  
-- **Deferred from April**

Mr. Gillis moved to note Appellee's exceptions, Appellant's response and oral argument, and to accept the Final Order Altering the recommended order and dismissing the appeal, as attached to the minutes. Judge Chandler seconded and the motion carried 7-0.

I.     Bryon T. Barnes v. Justice and Public Safety Cabinet (Juvenile Justice)

Mr. Gillis moved to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 7-0.

J.     Kimberly Bartley v. Education and Workforce Development Cabinet

Mr. Hutcheson moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 7-0.

K.     Debbie Biddle v. Justice and Public Safety Cabinet (Corrections)

Mr. Gillis moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 7-0.

L.     Fred Crane v. Justice and Public Safety Cabinet (State Police)

Judge Chandler moved to accept the recommended order dismissing the appeal. Ms. Gardner seconded and the motion carried 7-0.

M.     Elizabeth Mazzola v. Justice and Public Safety Cabinet

Mr. Gillis moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 7-0.

N.     Michael Smith v. Transportation Cabinet

Judge Chandler moved to accept the recommended order dismissing the appeal. Mr. Blevins seconded and the motion carried 7-0.



O. Lori Walden v. Cabinet for Health and Family Services

Dr. Stevens moved to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 7-0.

**Show Cause Orders – No Response Filed – Appeals Dismissed**

The following cases had a show cause order entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There was no response submitted by the Appellants to the show cause orders.

- P. Nathan Carter v. Transportation Cabinet
- Q. Abigail Wright v. Justice and Public Safety Cabinet (Corrections)
- R. Richard Roberts v. Tourism, Arts and Heritage Cabinet  
- (Ky. State Fair Board)

Mr. Hutcheson moved to find that the Appellants had not responded to the show cause order and that the recommended orders be accepted *en bloc* dismissing the appeals for failure to timely prosecute the appeals. Ms. Gardner seconded and the motion carried 7-0.

9. **WITHDRAWALS**

Mr. Gillis moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Judge Chandler seconded and the motion carried 7-0.

- A. Kevin Bailey v. Justice and Public Safety Cabinet and Personnel Cabinet
- B. Justin Burke v. Transportation Cabinet
- C. Wendy Jill Roberts v. Cabinet for Health and Family Services
- D. Josephine House v. Justice and Public Safety Cabinet (Juvenile Justice)
- E. Kristina Leathers v. Personnel Cabinet
- F. Erin E. Spalding v. Kentucky Commission on Human Rights

## 10. SETTLEMENTS

Dr. Stevens moved to accept the following settlements *en bloc*, as submitted by the parties, and to sustain the appeal to the extent set forth in the settlement. Mr. Hutcheson seconded and the motion carried 7-0.

- A. Lorenza Abrams II v. Justice and Public Safety Cabinet (mediated)
- B. Jennifer Combs v. Cabinet for Health and Family Services
- C. John D. Hughes, Jr. v. Finance and Administration Cabinet
- D. David Maupin v. Transportation Cabinet
- E. Evelyn J. Mills v. Public Protection Cabinet
- F. Timothy Anderson v. Transportation Cabinet
- G. Regina Clark v. Cabinet for Health and Family Services
- H. James E. Heady v. Tourism, Arts and Heritage Cabinet (Parks)

## 11. OTHER

Chairman Sapp asked if there were any other matters to be discussed. There being no further business, Mr. Hutcheson moved to adjourn. Judge Chandler seconded and the motion carried 7-0. (1:35 p.m.)

---

Wayne D. Sapp, Chairman

---

Larry B. Gillis, Vice Chairman

---

David B. Stevens, Member

---

David F. Hutcheson, Jr., Member

---

Susan Gardner, Member

---

Tommy Chandler, Member

---

Donald W. Blevins, Member